

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AIMEE WHITE, individually and on behalf
of K.W., a minor child,

Plaintiffs,

V.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. C09-5268RJB

ORDER ON PLAINTIFF'S
MOTION TO STRIKE
DEFENDANT'S LATE
DESIGNATED EXPERT

This matter comes before the Court on the above-referenced motion (Dkt. 36). The court has considered the pleadings filed regarding the motion and the file.

This matter is set for trial on June 21, 2010. Dkt. 16. The deadline to disclose expert witnesses was December 23, 2009. *Id.* The discovery deadline was April 30, 2010. Dkt. 22.

Plaintiff moves to strike the testimony of Michael Kottyan, who was disclosed as a witness on April 1, 2010. Dkt. 36. Plaintiff argues that Mr. Kottyan is likely to offer expert testimony, and if he does, he was not timely disclosed as an expert witness. Dkt. 36.

Defendant responds and states that it will not elicit expert testimony from Mr. Kottyan. Dkt. 44. Defendant states that his testimony will be offered as fact and opinion testimony as a TRICARE representative on the Defendant’s claim for offset. *Id.* Defendant states that it timely disclosed the relevant TRICARE records and identified Mr. Kottyan as a person who may have discoverable information. *Id.* Defendant accordingly “respectfully requests the opportunity to make a formal offer of proof on the record regarding the testimony that will be elicited from Mr.

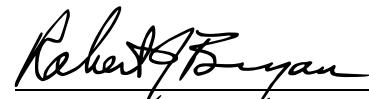
1 Kottyan, or any other TRICARE representative, to establish that such testimony will be limited
2 to fact and opinion testimony, as opposed to the expert opinions Plaintiffs are predicting will be
3 elicited" *Id.*, at 4. Plaintiff does not file a reply.

4 It appears at this stage, the motion to exclude the testimony of Mr. Kottyan (Dkt. 36)
5 should be denied without prejudice. To the extent that Defendant intends elicit expert testimony
6 from him, that testimony should be excluded for failure to timely disclose it. It is unclear,
7 however, to what Mr. Kottyan will be testifying. Defendant's offer of proof, if any, will
8 hopefully provide that information, affording the Court an opportunity to decide whether he
9 should be permitted to testify. Plaintiff may renew the motion, if appropriate, at that time.

10 Accordingly, Plaintiff's Motion to Strike Defendant's Late Designated Expert (Dkt. 36)
11 should be **DENIED WITHOUT PREJUDICE**.

12 The Clerk of the Court is directed to send uncertified copies of this Order to all counsel
13 of record and to any party appearing *pro se* at said party's last known address.

14 DATED this 25th day of May, 2010.

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17 Robert J. Bryan
18 United States District Judge
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